IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.660 OF 2007

Shri Namdev Narayan Ghunte, .. Petitioner. (Orig.Deft)

Vs

Sou. Jayashree Anil Parmale, .. Respondent. (Orig.Plff)

Mr P.L.Dalvi, for the petitioner.

CORAM : D.B.BHOSALE,J.
DATE : 29.01.2007.

PC:

1. Heard Mr.Dalvi, learned counsel for the petitioner.

2. In this writ petition under Article 227 of the Constitution of India, the petitioner-defendant has impugned the judgments of the courts below, concurrently holding that the petitioner has acquired suitable alternative accommodation and that the requirement of the suit premises is bonafide and greater hardship would cause to the respondent-plaintiff if the suit is not decreed.

3. Mr Dalvi, learned counsel for the petitioner, after taking me through some part of the judgments of

both the courts below, vehemently submitted that the burden was wrongly put on the petitioner-defendant to establish that the so-called alternative premises, bearing city survey no.971, was available for his occupation even if it is assumed that the said property is owned by him. Even on the point of bonafide requirement, he invited my attention to the number of members in the family to contend that greater hardship would be caused to the defendant if the decree of eviction is confirmed. I perused the findings recorded by the courts below on both the grounds and also went through the evidence of the petitioner-tenant with the assistance of the learned counsel for the parties. It appears from the evidence as also the other material on record that the distance between the suit premises and the city survey no.971, owned by the petitioner, is hardly 100 feet. The petitioner, in his deposition, has admitted the said fact. He, however, avoided to answer the further questions put in respect thereof in the cross-examination by simply stating that "he was not aware". He was specifically asked whether the structure - city survey no.971, consists of ground plus first floor, he stated that "he did not know". He further avoided to reply the question as to how many tenants are in occupation of the said premises. The said premises seem to have about nine rooms. A question in that

respect was also answered stating that he did not know how many rooms are there in the said property. He has not answered a single question in straight forward manner though he admitted that he is the owner of the said property. He seems to have avoided to give reply to the questions put to him in the cross-examination as the reply to those questions could have gone against him. It is against this backdrop, the submission of Mr Dalvi, learned counsel, that the courts below wrongly put the burden on the defendant to establish that the so-called alternative premises bearing city survey no.971, was available for his occupation, must be rejected. The moment the petitioner accepted that he is the owner of the suit property, the burden was on him to establish that it was not vacant, convenient and suitable for his occupation. Both the courts below, in my opinion, have rightly held that the petitioner has alternative suitable accommodation and decreed the suit. Insofar as the decree on the grounds available under section 13(1)(g) and 13(1)(l) of the Bombay Rent Act are concerned, in my opinion, they also do not warrant interference. Even on the point of comparative hardship I am satisfied that greater hardship would be caused to the respondent than the petitioner. Merely because there are more number of members in the family that, by itself, cannot be a ground to hold that greater hardship

would be caused to the petitioner. Considering that there are concurrent findings recorded by the courts below and as I find that there is sufficient material on record to sustain those findings and considering the extremely limited jurisdiction of this court under Article 227 of the Constitution of India to disturb the findings of facts, this writ petition fails and dismissed as such. As a consequence thereof, the civil application is disposed of.

4. At this stage, Mr Dalvi, learned counsel for the petitioner, seeks twelve weeks protection. I am inclined to grant the prayer. Hence, I pass the following order.

(i) The impugned decree shall not be executed for a period of twelve weeks from today subject to his filing an usual undertaking in this court within a period of four weeks from today. If the petitioner fails to file an undertaking as aforestated, it will be open to the respondent-landlord to execute the decree. Granting of protection, as aforestated, and filing of the undertaking, shall not curtail the right of the petitioner to carry this matter further, if he so desires.

(D.B.BHOSALE,J.)